

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARLO VARTINELLI,

Plaintiff,

CASE NO. 1:06-CV-136

v.

HON. ROBERT J. JONKER

CLAIRE HAMMER, et al.,

Defendants.

/

ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 62).

Defendant Claire Hammer filed Objections to the Report and Recommendation (docket # 63) on June 5, 2008, and Plaintiff Carlo Vartinelli filed a Response in Opposition to Defendant's Objection to Report and Recommendation (docket # 64) on June 18, 2008.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Carmody; the Report and Recommendation itself; Ms. Hammer's objections; and Mr. Vartinelli's response to the objections. After its review, the Court finds Magistrate Judge Carmody's Report and Recommendation to be both factually sound and legally correct.

For the reasons articulated in Mr. Vartinelli's Response in Opposition to Defendant's Objections to Report and Recommendation (docket # 64), the Court rejects Ms. Hammer's Objections to Report and Recommendation (docket # 63).

Accordingly, **IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (docket # 62), is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (docket # 37) is **GRANTED IN PART and DENIED IN PART**. Defendant Malatinsky's motion for summary judgment is **GRANTED**. Defendant Hammer's motion for summary judgment is **DENIED** as to Plaintiff's Eighth Amendment claims arising out of incidents occurring on March 10, 2000, and April 24, 2000, but **GRANTED** as to the remainder of Plaintiff's claims.

Dated: August 15, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE